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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

)
Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

REPLY COMMENTS OF GTE

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
12th Floor
Washington, D.C. 20036
202-463-5214

Jeffrey S. Linder
Bryan N. Tramont
David B. Silverman
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Its Attorneys

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GTE Service Corporation and its affiliated domestic communications companies listed below (collectively "GTE")¹ respectfully submit their reply comments on the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned matter. Comments were submitted on two broad issue areas: (1) spectrum compatibility and management, and (2) line-sharing. As GTE explains below, the Commission should rely on Committee T1 to develop advanced service spectrum management guidelines. As a matter of law and policy, however, the Commission cannot and should not mandate line-sharing.

I. SUMMARY

The record reflects effective consensus on spectrum management issues, but a sharp divergence of opinion on the Commission's "line-sharing" proposals. With

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

respect to spectrum management, there is nearly universal agreement that the Committee T1 process is fair and open and that the most appropriate role for the Commission is to encourage active participation in that process by all interested parties. The few parties alleging bias in Committee T1 offer no concrete evidence to support their case, and the Committee's scrupulous adherence to ANSI due process policies undercuts any claim of institutional favoritism toward ILECs or any other industry group. The Commission accordingly should adopt its tentative conclusion that Committee T1 should be primarily responsible for developing spectrum management guidelines.

The Commission also should take the following steps to assure that advanced services are deployed as widely as possible consistent with protecting service quality and network integrity:

- Confirm that T1E1.4 is responsible for developing spectral density masks and recognize that generic masks and a calculation-based approach to guarding against harmful interference are each appropriate in different circumstances.
- Defer issues of binder group management to T1E1.4, which has agreed in principle that binder group separation should not be used wherever possible, while permitting ILECs to continue to utilize such segregation in the interim to assure network integrity.
- Decline to impose a sunset for T1 AMI, and instead rely on the deployment of new, relatively non-interfering technologies and technological attrition to resolve this problem over time.
- Minimize disputes through the use of inter-carrier agreements and neutrally applied carrier policies, supplemented by the 252 arbitration process, instead of taking the risks inherent in the "test and see" approach advocated by some CLECs.
- Reject proposals to establish a centralized spectrum management czar, because spectrum compatibility raises issues that depend on localized network configurations and conditions, and issues that can be dealt with nationally already are being addressed in Committee T1.

With respect to spectrum unbundling, GTE urges the Commission to recognize that CLECs need no artificial assistance to compete in providing data services to any class of customers. ILECs have no market power in the emerging advanced services marketplace, and in fact are well behind both cable companies (the undisputed market leaders) and CLECs in deploying broadband services. Line-sharing is thus a solution in search of a problem – and a poor solution at that.

Because spectrum on a loop is not a network element, it is not subject to unbundling under Section 251(c)(3) or any other provision of the Communications Act. Even if it were a network element, loop spectrum plainly does not meet the Section 251(d)(2) impairment test because a CLEC can compete effectively by simply obtaining an entire unbundled loop. The related price squeeze allegations raised by some CLECs are nothing more than a product of their desire to ignore the voice market and concentrate on high-margin data services.

Finally, spectrum unbundling is just bad policy. It would deter investment in new technologies by ILECs and CLECs alike and would suppress competition for residential voice service. Mandatory unbundling also would raise considerable operational concerns and could create tremendous consumer dissatisfaction because of the inability of a single carrier to take full responsibility for service provisioning, maintenance, and repair. Notably, there would be no offsetting benefits: the artificial price break anticipated by some CLECs would be unlikely to materialize given the substantial costs that ILECs would incur – and have a right to recover from CLECs – in order to accommodate requests for unbundled spectrum. The Commission therefore

should decline to impose spectrum unbundling and instead should leave line-sharing to voluntary negotiations that permit each carrier satisfactorily to address the technical, operational, and economic issues involved in permitting multiple carriers to provide different services over the same loop.

II. SPECTRUM COMPATIBILITY ISSUES SHOULD BE RESOLVED BY COMMITTEE T1, WITH FCC INPUT AND FULL PARTICIPATION BY ALL PARTIES.

A. Long Term Solutions Are Best Achieved Through Wide Participation in T1E1.4

The Commission requested comment on proposed long-term solutions to spectrum compatibility and management issues.² While the vast majority of parties endorsed the proposal to assign responsibility for developing spectrum compatibility guidelines to Committee T1, a few CLECs suggested that the Commission provide both the framework and administrative means for overseeing spectrum policy.³ These commenters, however, cross the rubicon of Commission control in this area without first

² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-48, ¶ 79 (First Report and Order and Further Notice of Proposed Rulemaking) (Mar. 31, 1999) (*FNPRM*). Unless otherwise noted, all comments cited herein were filed pursuant to this *FNPRM* on June 15, 1999.

³ Comments of Rhythms NetConnections Inc. at 18-19 ("Rhythms NetConnections") (FCC should adopt parallel xDSL approval process); Comments of NorthPoint Communications, Inc. at 46 ("NorthPoint") (FCC should look to North American Numbering Council as model to develop long-term spectrum policies and structure to support those policies); Comments of MCI WorldCom Inc. at 2 ("MCI WorldCom") (FCC should take direct role in setting standards, establish general principles to govern spectrum management and install third-party administrator to implement those policies).

demonstrating that the agency possesses legal authority to implement such far-reaching schemes.

The contention that Section 256(b) of the Act conveys upon the FCC control over the standards process⁴ ignores both the intent and language of the law. Section 256(b)(1) provides only for “*oversight* of coordinated planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service.”⁵ The Act does not authorize the agency to set standards itself. Indeed, Section 256(b)(2) makes this abundantly clear by instructing the FCC to “participate, in a manner consistent with its authority and practice prior to February 8, 1996, in the development *by appropriate industry standards-setting organizations* of public network interconnectivity standards”⁶ Even if one were to construe Section 256(b)(2) to include the setting of standards for advanced services – which is not present on its face or otherwise demonstrated by any party – there is no evidence that the Commission has ever used this alleged authority to dictate procedure to independent industry-based standards-setting organizations. Thus, the Commission may not assume such a role now.

Advocates of a broader FCC role also fail to demonstrate any need for intervention in or disruption of existing industry processes. Indeed, most commenters

⁴ NorthPoint at 42.

⁵ 47 U.S.C. § 256(b)(1) (emphasis added).

⁶ 47 U.S.C § 256(b)(2) (emphasis added).

support the Commission's tentative conclusion⁷ that T1E1.4 should act as the forum to develop fair and open practices for deployment of advanced services technology.⁸

These parties also acknowledge that this process provides opportunity for consideration of all industry perspectives.

The only real dissenting views come from parties who assert that T1E1.4 is biased against the views of non-ILEC participants.⁹ These claims, however, misrepresent the membership of T1, grossly overstate the ILECs' role and influence, and disregard the internal mechanisms that balance the interests of different industry sectors. Based on the number of participants and contributions from the parties, the most active group in the T1E1 process is vendors, not ILECs. Moreover, T1E1 procedures require that votes of all interest groups be weighted so that an interest category's total possible votes do not constitute a majority of the membership.¹⁰

The fact that T1E1.4 rejected in large part a recent proposal by some CLECs in no way undermines the Committee's neutrality. T1E1.4 has rejected proposals from virtually every participant at one point or another. In reality, here a few CLECs

⁷ *FNPRM*, ¶¶81, 85.

⁸ Comments of Sprint Corporation at 3-4 ("Sprint"); Rhythms NetConnections at 22-23; Comments of Prism Communication Services, Inc. at 6-7 ("Prism"); Comments of AT&T Corp. at 9 ("AT&T"); NorthPoint at 45-46; Comments of Nortel Networks, Inc. at 7 ("Nortel").

⁹ NorthPoint at 43; Rhythms NetConnections at 21.

¹⁰ Standards Committee T1-Telecommunications, *Procedures Manual*, 11th Issue, at 3 (1998). The Procedures Manual is available on Committee T1's home page, <www.t1.org>.

introduced sweeping new requests just as T1E1.4 was ready to send out its proposed guidelines for letter ballot. The proposed guidelines, of course, represent the culmination of months of effort and reflect the timely input of a multitude of parties, including ILECs, CLECs, ISPs, and manufacturers. The CLECs' contributions were presented and discussed. Although all of their proposals were not adopted, the draft document was revised in some respects in accordance with the Committee's procedures. That procedure also provides a further opportunity for input through the T1 Letter Ballot process, during which the Committee receives comments and makes every effort to assure that issues are resolved.

While no changes to Committee T1's procedures are needed, increased participation, from both non-ILEC interests and the FCC, will broaden both the spectrum of viewpoints and the opportunity for consensus on widely acceptable approaches. The creation of a parallel process at the FCC (assuming the Commission had authority to do so) would merely complicate standards-setting and slow the deployment of new services. The Commission should therefore adopt its tentative conclusion and task T1 with primary responsibility for developing spectrum management guidelines. It should also encourage greater participation by CLECs in the Committee T1 process.

B. T1E1.4 Should Direct Power Spectral Density Mask Development

In its comments, GTE supported the Commission's view that T1E1.4 is the best forum for developing future PSD masks.¹¹ There is general agreement with this

¹¹ *FNPRM*, ¶81.

conclusion.¹² As Sprint aptly sums up, "T1E1.4 is the forum where the industry experts reside, and there is no similar assembly of industry expertise in any other forum in North America."¹³

There is also consensus that, while generic masks are an appropriate means to address spectrum compatibility, they are by no means the only solution.¹⁴ Nor should the calculation-based approach, also endorsed by commenters, be accepted as the exclusive determinant of the spectral compatibility of new copper access solutions.¹⁵ Instead, there is consistent support for acceptance of both tools for addressing spectral compatibility – each to be used where appropriate in a scheme that seeks to accommodate the broadest range of access and the widest variety of technologies.¹⁶

C. Binder Group Separation Policies Should Remain In The Hands of T1E1.4.

The FNPRM asks how to maximize deployment of new technologies within binder groups while minimizing interference.¹⁷ In its comments, GTE recommended

¹² Sprint at 3; Nortel at 4; Prism at 4-6; Comments of Network Access Solutions at 17 ("NAS"); Comments of BellSouth Corporation at 29-30 ("BellSouth"); Comments of US West Communications, Inc. at 8 ("US West"); AT&T at 5; MCI WorldCom at 5; Comments of Ameritech at 13 ("Ameritech"); Comments of Bell Atlantic at 15 ("Bell Atlantic").

¹³ Sprint at 3.

¹⁴ Sprint at 3; NAS at 18.

¹⁵ US West at 6.

¹⁶ Ameritech at 16; AT&T at 5-8; US West at 8; Prism at 7-8; Nortel at 5-6.

¹⁷ *FNPRM*, ¶86.

that T1E1.4 be permitted to finalize its work in this area.¹⁸ Others suggest that the Commission should order a halt to the practice of binder group management,¹⁹ or restrict it to those technologies (primarily AMI T1) that have demonstrated spectral incompatibility.²⁰ These recommendations, however, fail to take into account the current efforts of the T1E1.4 group to resolve these issues. As GTE noted, T1E1.4 has already agreed in principle that technologies that demonstrate spectral compatibility using the analytical method will not be subject to binder group separation in order to achieve full compatibility with any guarded transmission methods other than T1.²¹ This may, in the end, result in the restriction of binder group separation to only the most incompatible technologies – the result that all commenters seek.

Not only is there no justification for circumventing the T1E1.4 process at such a late date, there has been no evidence presented to support the conclusion that interim rules promulgated by the Commission would provide a more comprehensive solution. Until T1E1.4 resolves this issue conclusively, ILECs must be permitted to use their discretion in determining whether to segregate by binder group as a means to ensure network integrity.

D. There Is No Rational Justification For Banning Or Sunsetting AMI T1.

¹⁸ Comments of GTE at 10-11 (“GTE”).

¹⁹ Rhythms NetConnections at 23; NAS at 20; Comments of Covad Communications Company at 46 (“Covad”).

²⁰ AT&T at 13; MCI WorldCom at 7.

²¹ GTE at 10-11.

The Commission sought comment on whether to adopt a “grandfathering process for interfering technologies,” and in particular, whether to set a sunset period for AMI T1.²² GTE opposed this proposal in its comments, explaining that any mandatory sunset would force ILECs and customers to incur massive costs to discontinue serviceable technology.²³ Several parties nonetheless suggest that the FCC should impose an immediate ban, or a sunset period, on technologies that may create network interference.²⁴

It is undisputed that AMI T1 can be a source of interference in the outside plant. However, commenters advocating a sunset failed both to address the associated cost and dislocation issue and to demonstrate that market forces and technological attrition will not resolve this problem over time. There is therefore no justification for establishing “drop-dead” dates for the removal of AMI T1.

E. Disputes Should Be Resolved Pursuant to Interconnection Agreements and Neutral Carrier Policies Rather than the “Test-and-See” Proposal, Which Raises Serious Service Reliability Concerns.

The Commission asked whether it should develop a process to resolve disputes about whether a technology is significantly degrading other services, as well as how to define “significantly degrade.”²⁵ GTE urged the Commission to rely on carrier

²² *FNPRM*, ¶87.

²³ GTE at 11-12.

²⁴ Covad at 50; AT&T at 14; MCI WorldCom at 7;

²⁵ *FNPRM*, ¶166, n.166, ¶ 88.

agreements and neutral carrier policies such as those developed in the T1E1.4 context in order to minimize deployment disputes. In addition, to resolve disputes, GTE recommended use of the Section 252 arbitration process.²⁶ The alternatives suggested by certain CLECs are inadvisable.

Specifically, some CLECs propose a “test and see” policy of six-month deployment on ILEC networks to determine potential signal degradation.²⁷ While this alternative would expedite deployment of some new technologies, it would do so at a considerable price: existing services would be placed in real jeopardy. These CLECs fail to recognize that a “trial period” for new technology is meaningless unless the test is representative of a large percentage of the loop plant. They have failed to provide any guidelines for ensuring the integrity of limited trials as a means to predict the likelihood of system-wide interference problems. In addition, as a general matter, the concept of permitting the deployment of new services until they cripple portions of the loop is a major departure from the longstanding policy of determining the effects of such services prior to roll out. Such a shift would permit the widespread deployment of a service before intermittent problems could be identified and corrected. In this area, the Commission should adhere to a preventive, rather than a reactive, policy on the deployment of new services.²⁸

²⁶ GTE at 12-15.

²⁷ NorthPoint at 36-37; NAS at 20; Covad at 52.

²⁸ Other CLECs urge the Commission to adopt a presumption that technology is
(Continued...)

F. The Commission Should Reject Proposals To Create A Third Party Spectrum Management Czar.

The FNPRM seeks comment on identifying a third party to develop spectrum management policies and serve a role similar to that performed by the administrator for local number portability.²⁹ GTE objected to this proposal as duplicative of the role that T1E1.4 is ably performing. GTE also cautioned against usurping carriers' ability to control their own networks and noted that no centralized body possibly could perform the individualized determinations of interference susceptibility that are required.

Some CLECs nonetheless endorse the concept of an administrator based on the North American Numbering Council's model,³⁰ or other third-party constructs.³¹ These proposals, however, are neither necessary nor prudent. NANC simply is not an apt model. It deals with a fixed commodity – numbers – and a numbering process that is consistent across all venues. Spectrum compatibility, in contrast, deals with cable make-ups and service mixes that are hugely variable. To adopt a NANC-type approach

(...Continued)

acceptable for deployment if it complies with existing standards, is deployed without significant degradation elsewhere, or has been approved by the FCC or any state commission. Acceptable deployment in one network configuration in one location, however, does not guarantee that significant interference will not arise in a different configuration. Efforts to short-cut pre-deployment testing and analysis will come at the expense of customers of existing ILEC and CLEC services.

²⁹ FNPRM, ¶189.

³⁰ NorthPoint at 46-47.

³¹ MCI WorldCom at 8-9; AT&T at 16; Covad at 53.

to managing spectrum would irrationally presume that a national administrator would possess the incredible amount of local knowledge needed to make each individual decision. In any event, even if a national governing body were feasible, the forums and procedures for resolving interference issues already exist.

III. THE INITIAL COMMENTS CONFIRM THERE IS NO LEGAL OR POLICY BASIS FOR SPECTRUM UNBUNDLING.

A. The Commission Lacks Authority under Section 251 To Mandate Line Sharing.

1. Loop Spectrum Is Not a Network Element.

The record demonstrates that loop spectrum does not qualify as a network element under the statute.³² ILECs cannot be compelled to unbundle loop spectrum because that spectrum is not a “a facility or equipment used in the provision of a telecommunications service,” or a “feature[], function[], and capabilit[y] that [is] provided by means of such facility or equipment ...”³³

As GTE described in its opening comments, loop spectrum is different in kind from the “features, functions, and capabilities” envisioned by the statute (telephone numbers, databases, and signalling), all of which are ancillary functions used in the provision of service rather than physical characteristics of a network component. Here, the spectrum used to provide advanced services is derived by (and cannot exist

³² See Bell Atlantic at 7-9; US West at 17, 20-25; Ameritech at 2-4; BellSouth at 3-4, 6-10. See *also* GTE at 17-25. In addition, GTE explained in its opening comments that states do not have independent authority to order line sharing. GTE at 17 n.30; see *also* Bell Atlantic at 9, Ameritech at 5.

³³ 47 U.S.C. § 153(29).

without) the electronics attached at each end of the loop (e.g., for ADSL, the xDSL modems).

Concluding that loop spectrum is not a network element is also consistent with the Local Competition Order. There, the Commission “decline[d] to define a loop element in functional terms, rather than in terms of the facility itself.”³⁴ Instead, the Commission determined that an unbundled element most appropriately granted a carrier “exclusive control over network facilities” in order to provide maximum service flexibility – rather than requiring carriers to provide only some services, such as long distance, over the facility.³⁵ The Commission should adhere to the intent of the Act and the policy underlying the Local Competition Order, and decline to create a line sharing UNE.³⁶

2. Even if Loop Spectrum Were a Network Element, It Does Not Meet Any Reasonable Interpretation of the Necessary/Impair Standard.

Even if loop spectrum met the Act’s definition of a UNE, it still would not qualify for unbundling because access to such spectrum is not “necessary,” and the lack of

³⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15693 (First Report and Order) (1996”) (“*Local Competition Order*”). See also, *id.* (declining to categorize network elements “based on the types of traffic provided over a facility.”)

³⁵ See *Local Competition Order*, 11 FCC Rcd at 15693. See also Bell Atlantic at 7-9; US West at 16; Comments of SBC Communications Inc. at 18 (“SBC”).

³⁶ Proponents of line sharing do little more than assert without analysis that spectrum is a capability. See e.g. Comments of @Link at 5, Comments of Intermedia Communications Inc. at 3-4; MCI WorldCom at 10. They raise nothing of substance that warrants a response.

access does not “impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”³⁷ The necessary/impair standard set out in Section 251(d)(2) is intended to establish parameters on the availability of UNEs. At a minimum, that standard requires the Commission to consider the availability of alternatives to the element at issue and to recognize that a mere increase in cost or decrease in quality does not constitute impairment. Therefore, unbundling should be mandated only where an element is essential to competition and there is convincing evidence that CLECs cannot effectively compete using substitute inputs.³⁸ Line sharing does not meet this standard; nor, for that matter, does it meet any other reasonable interpretation of Section 251(d)(2).³⁹

a) The Advanced Services Marketplace Is Vigorously Competitive and Provides Numerous Alternatives to Line Sharing.

The advanced services market is vibrant and competitive.⁴⁰ This competitive landscape is a function of the numerous delivery technologies and facilities currently available to data providers across a variety of market segments. Efforts to single out ILECs as dominant players in this market are particularly misguided because it is the cable companies and CLECs that have an overwhelming lead in terms of customers

³⁷ 47 U.S.C. § 251(d)(2)(B).

³⁸ See Comments of GTE, CC Docket No. 96-98, at 3-4 (filed May 26, 1999) (“GTE UNE Remand Comments”).

³⁹ See SBC at 16-17 (spectrum unbundling does not satisfy the necessary/impair standard).

⁴⁰ GTE at 20-22; see *also* SBC at 14-16.

served and equipment deployed.⁴¹ Indeed, under the current regulatory regime, one analyst concluded that “CLECs have positioned themselves to rule the data market.”⁴²

The phenomenal success of data-only CLECs lays to rest any argument that they are being competitively impaired by being forced to take entire unbundled loops from ILECs or use other delivery mechanisms. Line-sharing certainly would confer a competitive advantage on data-only CLECs by mitigating their self-imposed business risks, but it would be an advantage enjoyed by particular competitors at the expense of fair and meaningful competition for the industry.⁴³

**b) The Harms Allegedly Engendered by the Lack of
Spectrum Unbundling Are Non-Existent.**

Spectrum unbundling is not warranted under the necessary/impair standard based on any economic disadvantage data-CLECs experience under the current regime. The purported “need” for line sharing is generated by a free market decision by certain CLECs to offer only data services. That decision comes with certain benefits (high margins) and some costs (the full loop). Whether a CLEC chooses to offer voice, to contract with a third party voice provider, or to allow the voice spectrum on a line to remain fallow is a private economic decision based on unique market abilities and

⁴¹ GTE at 21.

⁴² GTE UNE Remand Comments at 75.

⁴³ Tellingly, even AT&T implicitly acknowledges this competitive landscape, by urging that the Commission only adopt line sharing on a voluntary commercial basis. AT&T at 16. To the extent AT&T believes that line-sharing and open access to broadband cable networks are related, however, it is mistaken, as GTE explained at length in its opening comments. See GTE at 25-26 n.51.

conditions, including the availability of universal service funding.⁴⁴ Government efforts to encourage one type of provider (data-only CLECs) over others (ILECs, CLECs offering voice and data) is contrary to the public interest and the spirit of the Act. Moreover, when USF is appropriately addressed, CLECs will no doubt want to provide local service as the economics of voice portion of the loop become more lucrative.

CLECs offer up a number of alleged harms that purportedly flow from the lack of line sharing, including the supposed impossibility of providing data services at competitive rates due to the costs of the second line⁴⁵ and the failure of the current marketplace to provide adequate residential service options.⁴⁶

These commenters omit one fundamental point that undermines their allegations of harm: any CLEC that wishes to use the loop in the same manner as the ILEC does – that is, to provide both voice and xDSL services – can and will continue to compete on an even footing with all other carriers.⁴⁷ Only when a CLEC decides to ignore the voice portion of its spectrum does it face the alleged “uneconomic” choices that the CLEC

⁴⁴ Similarly, the lack of line sharing does not force CLECs to invest in both circuit-switched and packet-switching equipment. That decision is also a CLEC business decision (just as the equipment mix is an ILEC business decision).

⁴⁵ Covad at 14, 18-23.

⁴⁶ NorthPoint at 27-28. The CLECs also assert that there is a lack of voice-only partners available to data-only providers. NorthPoint at 13-15. This contention is belied by the marketplace. As GTE discussed in its initial comments, several major CLEC providers of high-speed services have partnered with AT&T, MCI WorldCom, and other long-distance carriers of both voice and data. See GTE at 23-24.

⁴⁷ In addition, as SBC observed, “although some CLECs are using ADSL, not one of them. . . has decided to unbundle the spectrum on those lines.” SBC at 17.

commenters focus on.⁴⁸ The ability to solve this dilemma lies in the CLEC's ability to offer voice or contract with a third party to do so, not in the government's or ILEC's ability to subsidize data-CLECs' business decisions.⁴⁹

The contention that line sharing will speed residential advanced services deployment is equally baseless. GTE agrees that DSL service from whatever source can help expand the reach of advanced services to all market segments because of its efficient use of existing copper plant. It is the ADSL technology itself, however -- not line sharing -- that permits this expanded residential service. The CLECs would have the Commission confuse a legitimate goal (residential deployment) with an illegitimate one (advancement of particular types of competitors). ADSL is being and will continue to be deployed to residential customers without line sharing, just as other sources of broadband access (most notably cable modems) will continue to be deployed at an increasing pace.

In reality, line sharing would affirmatively impair competition in the residential voice marketplace by encouraging CLECs to cherry-pick the residential customer's more lucrative data service, while declining to provide voice service. Thus, line sharing

⁴⁸ The allegedly uneconomic cost of a second line is thus a red herring. See NAS at 3; Comments of The Association for Local Telecommunications Services at 7 ("ALTS"); Covad at 32. Whether a first line or a second line, the issue is the CLEC's decision not to use the voice portion of the spectrum.

⁴⁹ The argument that CLECs should not be burdened with convincing consumers to change voice providers in order to receive data service from a CLEC confirms that these CLECs simply do not want to go after low margin voice business. The pre-conditions to fair competition are in place. NAS at 3-6. If a CLEC is not succeeding in luring voice customers away from the ILEC, its failure reflects only that it is not offering a sufficiently attractive alternative.

would only perpetuate the CLEC's ability to ignore the low-margin residential voice customers that Congress sought to benefit through local competition.⁵⁰

B. Line Sharing Cannot Be Justified Under Any Other Provision of the Act.

Some commenters advance alternative statutory rationales for mandated line sharing under Section 201 and 202 of the Act.⁵¹ In particular, they assert that line sharing is necessary to prevent illegal discrimination⁵² and that line sharing must be made available as an interstate access service, just as the FCC has required ILECs to make special access services available to CAPs.⁵³ These commenters' efforts to skirt the Supreme Court's specific remand of the unbundled network element issue should not be countenanced.

⁵⁰ See GTE at 27-28.

⁵¹ Indeed, Covad asserts that Section 201 and 202 provide a "much better" and "more reliable" rationale for line sharing than the unbundled network element theory. Covad at 24-25.

⁵² See ALTS 4, 14; NAS at 11-12; Covad at 14-18. Covad also asserts that a lack of line sharing would violate the nondiscriminatory interconnection and unbundling requirements of Section 251(c). Covad 22-23. Once again, however, Covad misses the point. The Commission has held that ILECs must provide CLECs with the same facilities and capabilities they utilize for their own services. Here, ILECs have done just that – GTE will provide CLECs with the same complete local loop GTE uses to provide voice and data services.

⁵³ See Covad at 14-18 (citing *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7473-74 (1992)); NAS at 11-12; see also Rhythms NetConnections at 4,6.

First, the Commission cannot do indirectly via Sections 201 and 202, what it cannot do directly under Section 251.⁵⁴ Second, the lack of line sharing is by no means discriminatory. ILECs today offer unbundled loops to all CLECs. CLECs may buy an unbundled loop and provide whatever services their business plans call for. Similarly, ILECs internalize the costs of an entire loop to provide whatever services their business plans allow. Just as an ILEC is free to offer data services or not, so too are CLECs free to offer voice services or not. In each case, it is the provider, not regulators, that should determine the service mix. Such a regime is simply not discriminatory.

Third, the CLECs' reliance on the Commission's Expanded Interconnection proceeding is inapposite. That proceeding, at bottom, only required the ILEC to separate certain transport services. In no way does it provide support for a requirement to subdivide capacity on a network component for use by multiple providers of different services. For each of the aforementioned reasons, sections 201 and 202 cannot form the basis for mandated line sharing.

Nor do current ILEC policies regarding line sharing amount to an unlawful tying arrangement, as asserted by Network Access Solutions.⁵⁵ "The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in

⁵⁴ See, e.g., *Natural Resources Defense Council v. EPA*, 683 F.2d 752, 763 n. 23 (3rd Cir. 1982); *Illinois Bell Telephone v. FCC*, 966 F.2d 1478, 1482 (D.C. Cir. 1992).

⁵⁵ See NAS at 13-14.

economic harm to competition in the 'tied' market."⁵⁶ "Of course where the buyer is free to take either product by itself there is no tying problem even though the seller may also offer the two items as a unit at a single price."⁵⁷ ILECs are not forcing anyone to buy voice services to receive data from them or vice versa. Any customer is free to obtain voice service from the ILEC and data service from the CLEC or voice service from the CLEC and data service from the ILEC or, for that matter, voice and data services from a CLEC.⁵⁸ In any case, though, each carrier must have its own loop.⁵⁹ NAS's tying argument therefore is nothing more than an effort to protect competitors from competition -- such is not the purpose of antitrust law.⁶⁰ There is, therefore, no disparate treatment between the ILEC and the CLEC, no discrimination, no tying, and no other basis for mandating spectrum unbundling.

⁵⁶ *Jefferson Parish Hosp. District v. Hyde*, 466 U.S. 2, 19, n.31 (1984) (footnote omitted).

⁵⁷ *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 6 n.4 (1958); see also *Marts v. Xerox*, 77 F.3d 1109, 1112 (D.C. Cir. 1996).

⁵⁸ GTE's voice and data services also compete with cable and satellite offerings. Such options further undercut NAS's tying assertion because these services are available elsewhere in a competitive marketplace.

⁵⁹ It is also important to note that the ILEC's provision of voice and data is not the "only economically viable option." *Marts v. Xerox*, 77 F.3d at 1113. Certainly CLECs offering both voice and data services are viable economic providers of these services. NAS has demonstrated nothing to the contrary.

⁶⁰ See *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 320 (1962).

C. The Public Interest in Investment and Innovation Would Not Be Served by Line Sharing.

Line sharing would create disincentives to investment for both CLECs and ILECs. As GTE explained in its opening comments, the consumer benefits of mandatory spectrum unbundling are virtually nonexistent and innovation would be eroded by regulations that arbitrarily favored CLECs.⁶¹ In this regard, the Commission has properly recognized that giving competitors "exclusive control over network facilities dedicated to particular end users" would create "maximum flexibility to offer new services."⁶² Similarly, as AT&T observed, "mandating spectrum unbundling would inhibit the development of new technologies that might more efficiently rely on overlapping spectrums for voice and data traffic."⁶³ For example, "the adoption of G-lite or splitterless ADSL may have been delayed or forestalled entirely if the prospect of spectrum unbundling had existed at the time each was being initially considered."⁶⁴ GTE agrees that the "Commission should not rush to adopt requirements that may constrain or frustrate such innovation."⁶⁵

⁶¹ See GTE at 25-27.

⁶² *Local Competition Order*, 11 FCC Rcd at 15693.

⁶³ AT&T at 19; *see also* SBC at 19 (spectrum unbundling would deter innovation).

⁶⁴ AT&T at 20.

⁶⁵ *Id.*

D. Mandatory Line-Sharing Would Create Regulatory and Operational Difficulties.

Even if the Commission concluded that it had the authority to mandate line sharing, there are a host of operational and regulatory difficulties that counsel against imposing a spectrum unbundling requirement.⁶⁶

1. Technical Feasibility and Interference Thresholds

Although GTE generally believes that line sharing is technically feasible, it also concurs with the assessment of various commenters that certain loops do not permit line sharing.⁶⁷ First, as pointed out by Bell Atlantic, many loops have their higher frequency bands already occupied.⁶⁸ These high frequency band services include: data-over-voice, ISDN, Digital Added Main Lines, EBS, and others.⁶⁹ NorthPoint essentially acknowledges this concern by conceding that line sharing should not be mandated for non-POTS lines.⁷⁰ Second, as Network Access Solutions points out,

⁶⁶ Obviously, for customers or locations where the loop need not be unbundled, loop spectrum cannot be subject to an unbundling obligation.

⁶⁷ Despite the general feasibility of line sharing, the Commission's reliance on the Pacific Bell/Concentric experience (*FNPRM*, ¶ 103) is largely misplaced. See SBC at 13-14.

⁶⁸ Bell Atlantic at 10-11.

⁶⁹ Bell Atlantic at 10-11; Ameritech at 12 (incompatible services include ISDN, PSDS, and P-phone, among others); Sprint at 10 (HDSL, ISDN, and DAML are not available for line sharing; G.Lite creates too much interference). As U S West also points out, some DSL technologies, such as RADSL, may not be compatible with others such as SDSL. US West at 12-15. SBC similarly states that SDSL technologies are generally inconsistent with analog voice data. SBC at 25. Such varying technological needs and standards underscore the general difficulty of subdividing loops.

⁷⁰ NorthPoint at 19-20.

some lines, due to their length or the presence of load coils and bridged taps, cannot support spectrum sharing.⁷¹ An ILEC therefore must be permitted to make a blanket showing to a state commission that spectrum unbundling is not technically feasible on a particular line.⁷²

GTE is particularly troubled by the proposal of ALTS to permit line sharing in every instance and rely on consumers to monitor the degradation of voice service.⁷³ It is important to recognize that it is the CLEC's DSL equipment, not the ILEC, that would define how the spectrum would be technologically divided.⁷⁴ Therefore, as U S West has explained, line sharing may be more appropriately conceived of as the CLEC determining the spectrum the ILEC will be forced to lease back to provide voice service.⁷⁵

Under this regime, CLECs have no incentive to insure that their equipment does not interfere with the ILEC's voice service. In the customer's eyes, however, the ILEC is to blame for impaired voice service, even though the interference is caused by the CLEC. Yet, the ILEC will be unable to resolve these complaints on its own. ALTS's "customer monitoring" proposal is therefore a recipe for disaster. Because the parties

⁷¹ NAS at 2, n.2; see *also* Sprint at 10; SBC at 25.

⁷² See Ameritech at 12; see *also* Comments of the Public Utility Commission of Texas at 5-6 (advocating central state commission role regarding service degradation analysis); Comments of the Oklahoma Corporation Commission at 15.

⁷³ ALTS at 10.

⁷⁴ See US West at 17, 20-25.

⁷⁵ US West at 17.

can resolve technical feasibility at a macro-level with the state commission, there is no justification for adopting ALTS's proposal to make each consumer a technical feasibility guinea pig.

2. Defining the Spectrum

If the Commission decides to proceed with spectrum unbundling, GTE shares the concerns raised by many commenters that the Commission must move carefully in mandating any specific technical division of spectrum. Once spectrum has been cordoned off for some services, other service providers undoubtedly will ask for their own slice of spectrum.⁷⁶ Such constant pressure to divide and subdivide spectrum would create an administrative nightmare both for the Commission and the responsible carrier and would exponentially increase the complexity of guarding against harmful interference. Consequently, any mandated spectrum unbundling be limited to two providers per line.⁷⁷

3. Implementation Costs

The Commission's Order also fails to conduct a fundamental cost/benefit analysis regarding line sharing. In reality, after all of the implementation costs are tallied and collected, line sharing simply is not a productive use of ILECs', CLECs', and

⁷⁶ BellSouth at 26.

⁷⁷ GTE also urges the Commission not to adopt strict spectrum boundaries for various types of services if it elects to pursue line sharing. See Nortel at 9 (advocating no hard frequency boundaries, but requiring sound engineering practices). Strict spectrum boundaries would thwart technological development and consume extensive regulatory resources.

the Commission's resources.⁷⁸ As BellSouth cautioned, "once all the costs are identified for the implementation of the many technical and operational changes that will be needed, any potential gain a CLEC believes it will obtain from spectrum unbundling will be diluted beyond its perceived value."⁷⁹ This is particularly true because the ability to provide voice over IP will sharply limit the life span of line sharing as a method of delivering advanced services.⁸⁰ In fact, voice over IP ultimately would leave the ILEC with an empty pipe since the data CLEC could offer "free" voice service as a feature of its data offering. Consequently, if, despite these factors, the Commission concludes line sharing is necessary, ILECs must be able to recover their one-time costs up front, as well as the recurring costs associated with handling each order for unbundled spectrum.⁸¹

⁷⁸ Indeed, SBC estimates this cost of line sharing implementation in the hundreds of millions of dollars. See SBC at 21.

⁷⁹ BellSouth at 17. BellSouth, like GTE, would need to develop a new loop inventory system, new OSS based on spectrum division multiplexing, and a special service ordering and tracking system. BellSouth at 21-22; SBC at 20-22; see GTE at 28-29.

⁸⁰ See also SBC at 19-20. GTE also agrees with BellSouth that packet switched networks will render CLECs' primary rationale for line sharing moot. BellSouth at 5; see also Sprint at 16-17 (Sprint ION may supplant the need for line sharing, but the Commission should not prejudge how this market will evolve). GTE also concurs that as technology evolves and CLECs begin providing voice over data spectrum, they should be required to pay the full costs of the loop. See BellSouth at 16.

⁸¹ See BellSouth at 17; GTE at 29. These implementation costs may include replacement of current equipment with true three-port splitters with filters at both the central office and on customer premises for ILEC use unless CLECs have the same obligations for provisioning, maintenance, and repair as incumbent providers. See BellSouth at 19-20.

4. Maintenance and Repair Issues

Numerous maintenance and repair issues would plague spectrum unbundling.⁸²

As discussed above, the CLECs' control of defining shared spectrum would introduce a new and more complicated level of shared responsibility for loop infrastructure. GTE's comments noted some of the difficulties associated with this shared responsibility, including identifying the causes of line problems, handling maintenance requests, limiting and monitoring what services can be performed over which spectrum segment, and responding to non-payment for some services.⁸³ Other parties detail similar concerns. For example, as Bell Atlantic and other parties point out, in an unbundled spectrum environment neither carrier will have the ability to isolate or remotely test their services.⁸⁴ This inability will also hinder diagnosis of loop problems in the system.⁸⁵ Even Sprint recognizes that current automatic line testing systems cannot perform in a line sharing environment.⁸⁶

No advocate of line sharing has made any realistic effort to address these matters. Rather, they assert only that these operational issues are similar to those faced by ILECs providing DSL themselves.⁸⁷ As GTE pointed out in its initial

⁸² AT&T at 16.

⁸³ See GTE at 29-31; BellSouth at 5.

⁸⁴ Bell Atlantic at 10, 12-13. Similarly, as AT&T observes, it is not clear who would be responsible for placement of filtering equipment. AT&T at 18.

⁸⁵ Ameritech at 11-12.

⁸⁶ Sprint at 11.

⁸⁷ Covad 7-14; NorthPoint at 21-22.

comments, however, there is an obvious difference between two competing carriers sharing a line and the ILEC's provision of both voice and data services.⁸⁸

Fundamentally, in a shared environment, CLECs have no incentive to ensure quality voice service. Moreover, difficulties with OSS, identification of the causes of line problems, and testing are all unique to the two-carrier environment.

Also to no avail, CLECs argue that spectrum unbundling presents the same operational issues as ILECs "sharing" the line with long distance providers.⁸⁹ Yet "sharing" for long distance services is vastly different. First, long distance and local carriers only use the loop for one service at a time, not concurrently. Moreover, the ILEC and IXC each controls its own network, making interference and other operational issues less acute. Although some tracking and billing issues may be similar, in the long distance context these issues took considerable time and cost to resolve before consumers received the benefits of limited long distance competition. In contrast, the scant benefits of line sharing in the already competitive advanced services market simply do not measure up to the corresponding implementation costs.

5. Implementation Timetable

A number of commenters point out that the necessary modifications to OSS and other support structures would take significant time to achieve because current systems are designed to have loops engineered, provisioned, assigned, and maintained by a single entity. For example, Ameritech suggests a two-year time frame for

⁸⁸ See GTE at 28-29.

⁸⁹ Covad 7-14; Comments of the Commercial Internet Exchange Association at 9.

implementation of spectrum unbundling.⁹⁰ In light of the substantial time and resources necessary, GTE recommends nothing short of an 24 month implementation window.

E. The Commission Should Adopt Pricing Rules That Provide Appropriate Market Signals to All Carriers.

Numerous commenters have suggested that CLECs should be entitled to line sharing at the ILEC's incremental costs, a figure that they claim approaches zero.⁹¹ As GTE showed above, however, line sharing by a second carrier imposes significant one-time and recurring costs. Therefore, the CLECs are fundamentally mistaken in assuming that they can get loop spectrum for free. Such pricing would violate Section 252(d) of the Act and amount to an unconstitutional taking of property, since it would fail to compensate ILECs for the costs of providing the spectrum.

Even if the CLECs were correct that line sharing between carriers involves no incremental costs, pricing the shared spectrum at this level would be unsound economic policy. Quite simply, making unbundled spectrum available at no cost to CLECs would eliminate any incentive for them to offer voice service. Under this proposal, provision of voice service would require CLECs to employ – and pay for – the

⁹⁰ Ameritech at 8-9; SBC at 21 (estimating 18-24 month implementation process). Even Sprint recommends a twelve month window for companies to modify their systems. Sprint at 12.

⁹¹ See Sprint at 13-15; Covad at 39-41; NorthPoint at 28; Rhythms NetConnections at 13-14. The natural flaw in this reasoning is demonstrated by inverting the example. Under these commenters rationale, if a data-only CLEC provided service on a loop and another carrier wished to provide voice service, the incremental cost for the voice service would be zero. Because ILECs are required to provide voice service, the CLEC model inevitably leaves the ILEC holding the cost bag for the local loop – despite the realities of the loop's use.

entire loop, with only marginal financial gains. Similarly, allowing CLECs to offer the most lucrative, rapidly expanding and innovative of services at facilities' prices close to zero would have a potentially fatal impact on the incentive for these carriers to construct their own facilities. Fair and efficient competition requires that CLECs bear the full economic costs of loop facilities, whether by investing in their own loops or acquiring unbundled loops from the incumbent.

IV. CONCLUSION

GTE shares the Commission's goal of promoting the widest possible deployment of advanced services. GTE also agrees with the Commission's proposed approach to future spectrum management policies, which would rely on Committee T1 to develop guidelines permitting advanced services to be introduced in a manner that assures preservation of service quality across existing and future offerings. That Committee adheres to a strict policy of openness and non-discrimination. The Commission can assure that Committee T1 develops optimal technical standards by encouraging participation in its efforts by all interested parties. Alternative approaches, such as establishing a new entity to assume some or all of Committee T1's role or injecting the Commission more heavily into the process, are both entirely unnecessary and counter-productive.

GTE strongly disagrees, however, with the proposal to require ILECs to provide "unbundled" spectrum on local loops to CLECs that do not wish to use the entire loop. Spectrum on a loop is not a network element and therefore cannot be subject to mandatory unbundling. Even if it were a network element, loop spectrum does not

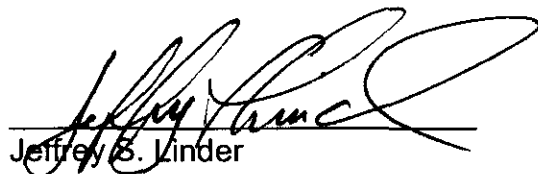
meet any rational interpretation of the Section 251(d)(2) impairment standard for the simple reason that the underlying loop itself is available as a network element. Imposing a line-sharing requirement also would deter investment in newer, packet-switched technologies and diminish competition for voice service. Finally, mandatory line-sharing would raise considerable operational issues and impose costs that likely would overwhelm any artificial pricing advantage that data CLECs hope to obtain. For all of these reasons, the Commission should decline to adopt its line-sharing proposals.

Respectfully submitted,

GTE Service Corporation and its
affiliated domestic communications
companies

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
12th Floor
Washington, D.C. 20036
202-463-5214

By:


Jeffrey S. Linder
Bryan N. Tramont
David B. Silverman
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Its Attorneys

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